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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 272

ARTHUR TERMINIELLO,

Petitioner,

vs.

CITY OF CHICAGO,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Arthur Terminiello respectfully petitions for a writ of certiorari to the Supreme Court of the State of Illinois to review a decree of said Court entered on March 18, 1948 (R. 145), affirming judgments of the Municipal Court of Chicago (entered April 8, 1946; R. 55) and the Illinois Appellate Court for the First District (entered June 25, 1947; R. 133), holding petitioner guilty of disorderly conduct and fining him $100 and $10 costs.

The opinion of the Supreme Court of Illinois is reported in Volume 400 of Illinois Reports at page 23, and that of

the Illinois Appellate Court for the First District in Volume 332 of Illinois Appellate Reports at page 17.

Petitioner filed a "Petition for Rehearing" in the Supreme Court of Illinois in connection with its said judgment on April 12, 1948 (R. 146), which petition was denied on May 13, 1948 (R. 157). On August 10, 1948, petitioner filed herein an application for an extension of time within which to file a petition for a writ of certiorari, the time granted under the Rules of this Court expiring on August 13, 1948. Petitioner was granted a thirty-day extension of time, or until September 13, 1948, for the filing of this petition for a writ of certiorari. This petition is filed on September 11, 1948.

A

Statement of the Matters Involved

This is a "free speech" case, if there ever was one, as the following facts will reveal.

Petitioner was found guilty by a jury in the Municipal Court of Chicago of "disorderly conduct" and fined $100 and $10 costs. Petitioner was charged with having violated Sub-Section 1 of Section 1 of Chapter 193 of the Revised Code of 1939 of the City of Chicago on February 7, 1946, in that he, allegedly, "did make or aid in making an improper noise or diversion tending to a breach of the peace within the limits of the city" (R. 53). A direct appeal was taken to the Supreme Court of Illinois on the grounds that to prosecute petitioner under the ordinance in question—the so-called "disorderly conduct" ordinance of the City of Chicago—*for making a speech* was in violation of the First Amendment to the Constitution of the United States, as well as Article II, Section 4, of the Constitution of the State of Illinois; that if *the making of a speech* can be construed to be "disorderly conduct" under said ordi-

nance, then said ordinance, or at least such application of it; is unconstitutional; and, further, that to attempt to charge a violation of said ordinance by *the making of a speech* is in violation of the due process clause of the 14th Amendment to the Constitution of the United States.

The cause was transferred to the Illinois Appellate Court for the First District, because, it was alleged, "no constitutional question" was "presented *so as to confer jurisdiction*" (Emphasis supplied) on the Illinois Supreme Court (*City of Chicago* v. *Terminiello*, 396 Ill. 41). It should be noted that the cause was transferred *not because a constitutional question was not involved*, but because the constitutional question involved, and properly raised in the trial court, *had not been so presented* to the Illinois Supreme Court (to-wit, accompanied by a certificate of the trial Judge that a constitutional question was involved) *as to confer jurisdiction* upon that Court.

Subsequently, the Illinois Appellate Court for the First District affirmed (*City of Chicago* v. *Terminiello*, 332 Ill. App. 17) in a majority opinion (R. 1 to 19). But a long, vigorous, scholarly dissent was filed by Presiding Judge Niemeyer (R. 19 to 30).

Petitioner then filed a petition for leave to appeal in the Supreme Court of Illinois (R. 1), and it was allowed (R. 134). On March 18, 1948, the Illinois Supreme Court, acting upon written briefs supplemented by oral argument, affirmed (*City of Chicago* v. *Terminiello*, 400 Ill. 23; R. 145). Petitioner filed a petition for rehearing in the Supreme Court of Illinois (R. 146) on April 12, 1948; said petition was denied on May 13, 1948.

This Court granted petitioner a thirty-day extension, or until September 13, 1948, within which to file this petition for a writ of certiorari herein. This petition is filed on September 11, 1948.

B

Jurisdiction

The jurisdiction of this Court is invoked under Sections 1257 and 2106 of New Title 28, the Chapter entitled "Judiciary and Judicial Procedure", of the United States Code, approved June 25, 1948, and effective September 1, 1948. The decree of the Supreme Court of Illinois to be reviewed was filed on March 18, 1948 (R. 145). Petitioner filed a petition for rehearing on April 12, 1948 (R. 146); it was denied on May 13, 1948 (R. 157). This petition for a writ of certiorari is filed within the thirty-day extension of time granted by this Court, within which to file the same.

Raising of Constitutional Question in Municipal Court of Chicago

On March 29, 1946, during the trial of this cause in the Municipal Court of Chicago, the following proceedings took place (R. 84):

> "Mr. Pantelis" (one of counsel for the City of Chicago): The City will therefore rest.
>
> "And thereupon, the plaintiff rested its case.
>
> "Mr. St. George" (one of counsel for petitioner): "At the end of all the testimony for the plaintiff in the case, the defendant moves to exclude all testimony and moves for a directed verdict, that the jury find the defendant not guilty. *The basis is the first amendment to the United States Constitution:* Father Terminiello had a right to say *what he said and what he said was protected by the first amendment to the Constitution*, that the charge in this case, namely, a diversion tending to a breach of the peace, *if it is constitutional under the first amendment, could not prohibit free speech or tend to prohibit free speech; otherwise it would be unconstitutional.*" (Emphasis added.)
>
> "The Court: Motion for directed verdict overruled."

On April 2, 1946, the following proceedings were had during the trial of this cause in said Court (R. 126):

"The jury was excused until 9:30, April 3, 1946.

"Mr. St. George: I just want to make a motion. May it please the Court, at the close of all the testimony in the case, both for the plaintiff and defendant, I move for a directed verdict for the defendant *on the ground that the charge as construed in connection with the speech alleged, which is the subject of arrest, would be in contravention of the 14th Amendment, the 'due process' clause, and further, that to charge this defendant with committing a misdemeanor because he gave the speech in question is a contravention of the First Amendment to the Constitution.*"

Mr. St. George's motion was overruled by the Court. The following appears in the Record (R. 126), under date of April 3, 1946:

"Proceedings April 3, 1946. Instructions offered by plaintiff and refused by the Court.

"Mr. St. George objected to the refusal of the Court to give the following instructions for defendant.

"

"

"

"The Court instructs the jury that the right of free speech is a national right, federally guaranteed, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede. And you are instructed to weigh carefully any evidence which would have a tendency to cause you to restrain or deny to the defendant his constitutional right of free speech.

"The court further instructs the jury that they must consider whether there was a clear and present danger flowing from the defendant's speech that said speech would tend to breach the peace. The jury are instructed that no danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there

opportunity for discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by processes of education, the remedy to be applied is more speech, and not enforced silence. Only an emergency can justify repression of the constitutional right of free speech."

The following appears in the Record (R. 130) for April 8, 1946:

"Defendant prayed an appeal from said judgment to the Supreme Court of the State of Illinois which was allowed on the defendant filing his appeal bond in the sum of $500.00 instanter, bill of exceptions to be filed in sixty days."

Raising of Constitutional Question in Other Courts

Petitioner filed an extensive "Brief and Argument" in the Supreme Court of Illinois, in connection with the attempted "direct appeal." The cause was transferred to the Illinois Appellate Court for the First District (R. 133) where it was considered on the basis of the briefs of the parties theretofore filed in the Supreme Court of Illinois and oral argument. The basis for the appeal is stated in said brief, as follows: "That to prosecute defendant" (petitioner herein) "under the ordinance in question for making a speech was in violation of the First Amendment to the Constitution of the United States as well as the Constitution of the state of Illinois, Article II, paragraph 4, and that if the making of a speech can be construed to be disorderly conduct under said ordinance, then said ordinance is unconstitutional and further that to attempt to charge a violation of said ordinance by the making of a speech is in violation of the due process clause of the 14th Amendment to the Constitution of the United States."

Said brief, under the sub-title "The nature of the pleadings", contained the following:

"At the end of all the evidence for the City defendant moved to exclude all the testimony and for a directed verdict that the jury find the defendant not guilty on the grounds that defendant's speech was protected by the First Amendment to the Constitution, that otherwise the ordinance in question was unconstitutional (Abst. 44). And at the end of all testimony in the case, both for plaintiff and defendant, appellant renewed said motion for a directed verdict on the same grounds and for the further reason that the charge would be in contravention of the due process clause of the 14th Amendment to the Constitution (Abst. 102). Both of these motions were overruled."

Said brief also contained the following, under the heading "Errors Relied on for Reversal":

"(3) The speech of defendant was not a violation of the ordinance in question and was protected by the First Amendment to the Constitution of the United States and the Constitution of the State of Illinois, Article II, paragraph 4.

"(4) To charge a violation of said ordinance is in contravention of the due process clause of the 14th Amendment to the Constitution of the United States and of the Constitution of the State of Illinois.

"(5) The court improperly instructed the jury and also refused to give proper instructions requested by defendant."

These same questions were raised also in the body of the brief, with extensive argument. The following cases, among others, were cited: *Stromberg v. California*, 283 U. S. 359; *Near v. Minnesota*, 283 U. S. 697; *Thornhill v. Alabama*, 310 U. S. 88; *Cantwell v. Connecticut*, 310 U. S. 296; *Drivers Union v. Meadowmoor Co.*, 312 U. S. 287; *Murdock v. Pennsylvania*, 319 U. S. 105; *W. Va. Board of Education v. Barnette*, 319 U. S. 624; *Thomas v. Collins*, 323 U. S. 516; and *Chaplinsky v. New Hampshire*, 315 U. S. 568.

Constitutional and Statutory Provisions Involved

The constitutional provisions involved are the First and the Fourteenth Amendments to the Constitution of the United States and Section 4 of Article II (part of the so-called "Bill of Rights") of the Constitution of the State of Illinois.

The statutory provision involved is Sub-Section 1 of Section 1 of Chapter 193 of the Revised Code of 1939 of the City of Chicago, the so-called "Disorderly Conduct Ordinance" of the City of Chicago.

For the convenience of the Court, the constitutional and statutory provisions are set forth in "Appendix A" attached to this petition.

Questions Presented

Whether the construction of a so-called "Disorderly Conduct Ordinance" may be so perverted and distorted by Courts as to deprive one of the constitutional protection afforded by the First and Fourteenth Amendments to the Constitution of the United States and by Section 4 of Article II, part of the so-called "Bill of Rights", of the Constitution of the State of Illinois. Also, whether the judgments of the Supreme Court of Illinois, the Illinois Appellate Court for the First District, and the Municipal Court of Chicago, herein, are not directly in conflict with and repugnant to the law of the land, as laid down by this Court in its prior decisions.

E.

Reasons Relied On for the Allowance of the Writ

(1) Petitioner is entitled to a reversal of the judgments of the lower Courts, because said judgments are repugnant to prior decisions of this Court relating to "free speech" and "free assembly".

Among the cases relied upon by petitioner to sustain this view are:

Thornhill v. Alabama, 310 U. S. 88;

Cantwell v. Connecticut, 310 U. S. 296;

Lovell v. Pennsylvania (City of Jeannette), 319 U. S. 105;

West Virginia State Board of Education v. *Barnette*, 319 U. S. 624.

(2) The decisions of the lower Courts should be reversed, also, because, if allowed to stand, the conviction of petitioner would constitute a "previous restraint" upon the right of all citizens of the City of Chicago to the "free speech" and "free assembly" constitutionally guaranteed to them. Such "previous restraints" have been passed upon by this Court and *ruled out* in no uncertain terms.

The principal case relied upon in this connection is:

Near v. Minnesota, 283 U. S. 697.

The case of *Thomas v. Collins*, 323 U. S. 516, is also cited.

(3) With all due respect to the learned Jurists who have held otherwise, there was no "breach of the peace" inside of the hall wherein petitioner spoke on the evening of February 7, 1946. This statement is fully supported by the Presiding Judge of the Illinois Appellate Court for the First District in his very able and learned dissent, which evidences the highest degree of discernment (R. 19 to 30). The speech

of petitioner, therefore, must be carefully examined to see if it, or any part of it, created a "clear and present danger" that a "breach of the peace" might result because of what was said. Such a "clear and present danger", or degree of imminence, is absolutely essential, under prior decisions of this Court, if petitioner's conviction is to be permitted to stand.

The Case of *Cantwell* v. *Connecticut*, *supra*, at page 311, contains the following in this connection:

> "Although the contents of the record not unnaturally aroused animosity, we think that, in the absence of a statute narrowly drawn to define specific conduct as constituting *a clear and present danger* to a substantial interest of the State, the petitioner's communications *considered in the light of the constitutional guarantees*, raised no such *clear and present menace* to public peace and order as to render him liable to conviction of the common law offense in question." (Emphasis supplied.)

As this Court will recall, in the *Cantwell case*, a member of the religious sect known as "Jehovah's Witnesses" stopped two persons on a public street in the City of New Haven and asked for and received permission to play for them a phonograph record. The record was entitled "Enemies" and it attacked the Roman Catholic Church and religion in very vicious and vitriolic terms. It so happened that the two men were Catholics.

The *Cantwell case* presents the best answer to respondent in the case at bar. If what Cantwell did was not of such a nature as to create a "clear and present danger" that the peace would be breached (and this Court has held that it was not), it is childish to contend that anything contained in petitioner's speech was of such a nature. Cantwell's affront was to two specific persons who were of the Roman Catholic faith; this, obviously, made them most susceptible

to insult by the playing of the phonograph record in question. Petitioner, on the other hand, simply made a general speech to an audience numbering about 800 persons. No part of his speech was directed to any specific person.

Thomas v. *Collins*, *supra*, and *Bridges* v. *California*, 314 U. S. 252, are two other cases that speak authoritatively with regard to the "clear and present danger" doctrine.

Petitioner might go on to cite many other cases in which the views of this Court as to the necessity for existence of a "clear and present danger" are similarly expressed. To do so, he feels, would be to insult the intelligence of the Court and to transgress unduly upon its time. There is perhaps no other single point involved in this cause that is so generally recognized and conceded by the Judges of all other Courts in the United States and so generally known to all lawyers worthy of the name and profession, no matter how limited their practice may be.

Conclusion

The conviction of petitioner *for making a speech*, as he thought, at a private meeting, in pursuance of his right of "free speech" and "free assembly", is repugnant to the law of the land as laid down by this Honorable Court in its prior decisions, as are also the affirmances of that conviction by the Illinois Appellate Court for the First District and the Supreme Court of Illinois. The proceedings in these lower Courts of the State of Illinois resulting in the wrongful conviction of petitioner should be reviewed by this Court.

Wherefore, Your petitioner prays that a writ of certiorari be issued under the seal of this Court, directed to the Supreme Court of Illinois, to the end that this cause may be reviewed and determined by this Court; that the decree of the said Supreme Court of Illinois be reversed by this

Court; and that he may be granted such other and further relief as to this Court may seem meet and proper.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 272

ARTHUR TERMINIELLO,

Petitioner,

vs.

CITY OF CHICAGO,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

I

Preliminary Statement

A statement of the matters involved (including the action taken in the lower Courts), jurisdiction, constitutional and statutory provisions involved, the questions presented, and reasons relied upon for the allowance of the writ appear in the "Petition for a Writ of Certiorari" herein and in the interest of brevity are incorporated here by reference.

II.

Summary of Argument

Introductory Statement. Petitioner begins his "Argument" with this statement, in order that this Court may determine the issues herein and reach its decision as to the granting of the writ prayed for fully informed about the most unusual conditions that prevailed in the vicinity of, and inside of, the hall at the time petitioner exercised his

right of free speech by making the speech involved in this cause. No description of those conditions could be more graphic, or accurate, than that which appears in the majority opinion of the Illinois Appellate Court for the First District and which is quoted in full in the argument.

So far as petitioner's speech and this cause are concerned, it does not matter whether the meeting in question was *public* or *private*.

No "breach of the peace" actually took place inside of the hall.

There was nothing in petitioner's speech that *tended to cause any breach of the peace*. Quotation from dissenting opinion of Presiding Judge in Illinois Appellate Court, with cases, cited in support of this contention.

Point 1. Judgments in lower Courts are repugnant to prior decisions of this Court. They should be reversed.

Petitioner's speech was entitled to constitutional protection. Nothing in it falls within any exception denying "free speech" protection. For instance, *Stromberg* v. *California*, 283 U. S. 359, Mr. Justice Holmes' famous exception, or *Chaplinsky* v. *New Hampshire*, 315 U. S. 568.

Lower Court judgments are repugnant to:

Thornhill v. *Alabama*, 310 U. S. 88. Opinion by Mr. Justice Murphy quoted extensively.

Cantwell v. *Connecticut*, 310 U. S. 296. Opinion by Mr. Justice Roberts quoted at length.

Murdock v. *Pennsylvania (City of Jeannette)*, 319 U. S. 105. Extensive quotations from opinion by Mr. Justice Douglas.

West Virginia State Board of Education v. *Barnette*, 319 U. S. 624, 639, also cited.

Lower Court judgments, if allowed to stand, present grave threat to "freedom of speech" and "freedom of assembly" not only in the City of Chicago but in the entire Country.

Point 2. Petitioner's conviction constitutes a "previous restraint" upon the right of all citizens to "free speech" and "free assembly".

Case of *Near* v. *Minnesota*, 283 U. S. 697, cited, with extensive quotations from opinion by Mr. Chief Justice Hughes.

Thomas v. *Collins*, 323 U. S. 516, also cited. Quotations from opinion by Mr. Justice Rutledge set forth.

Point 3. There was no "breach of the peace" inside of the hall. This contention supported in dissenting opinion in Illinois Appellate Court. Attention of the Court directed to this again.

Also, no part of petitioner's speech presented "a clear and present danger" that any substantive evil would result because of what was said. Such "a clear and present danger" is essential, if petitioner's conviction is to stand.

Cantwell v. *Connecticut*, *supra*, cited again to support "clear and present danger" doctrine, also *Thomas* v. *Collins*, *supra*. *Bridges* v. *California*, 314 U. S. 252, also cited.

Conclusion. No curtailment of petitioner's "free speech" is justified. This Court has wide discretion in considering "free speech" question. Quotation from opinion by Mr. Justice Frankfurter in *Drivers Union* v. *Meadowmoor Co.*, 312 U. S. 287, 293, cited in support. Court urged to review lower Court judgments, to the end that petitioner's wrongful conviction may be set aside.

III

Argument

Introductory Statement

Some points were raised by petitioner in the Illinois Appellate Court for the First District and the Supreme Court of Illinois on which rulings adverse to him were made,

notably that as to whether the meeting at which he spoke was a "public" or a "private" meeting. So far as these matters and this cause are concerned, the judgments of the lower Courts are final and there would be no point in discussing them in this brief. But petitioner does feel that this Court should be fully informed as to conditions that prevailed that evening around the building in which petitioner spoke and in the hall itself, as revealed by the record, for it is felt that this Court will agree, unanimously, that petitioner, under the circumstances that did exist, exercised and exhibited remarkable self-restraint in what he said and also in failing to take, and recommending that those in the audience take, direct action of some kind against the real lawbreakers on the outside of the hall.

In that regard, the majority opinion of the Illinois Appellate Court for the First District contains the following (R. 6 to 8):

> "From the testimony of all of the witnesses for defendant" (petitioner herein), "we find proof of the following facts; that around the hour of 6:30 P. M. of the day of the meeting, a crowd gathered in front of the building, and a picket line was formed by those in apparent protest to the appearance of the defendant and the holding of such a meeting; that the size of the picket line was described variously from 250 to 500 in number, composed of men, women and young people. It was stated by some of the witnesses that the size of the crowd gathered in front of the building was around 1500 in number. This crowd and the picket line, hereinafter detailed, were there before the start of the meeting. About 200 to 300 people who had tickets for admission could not get in because the hall was filled. Some who had tickets and who those in charge of the door tried to keep out, succeeded in getting in. The witness Karel, for the plaintiff, was one of those. He was known to the attendant at the door. A cordon of police was stationed around the outside of the meeting

hall before the start of the meeting and 6 or 8 police officers, some in uniform and others not, were stationed within the hall at the front and rear entrances. The picket line carried banners with inscriptions condemnatory of the meeting, and it was so formed as to obstruct and interfere with the free access to the meeting by those entitled to enter. *The crowd around the building was a surging, howling mob, hurling epithets at those seeking to get into the meeting.* Groups who came together for the meeting were separated by the mob and were unable to remain together or enter the meeting together. *The pushing and milling crowd tried to tear their clothes off. One young woman's coat was torn off of her. Some had to be assisted into the meeting hall by policemen.* Before the defendant spoke, those inside the hall could hear the loud noises and the yelling and hollering on the outside. *They could hear those on the outside yell, 'Fascist,' 'Hitlers' and other names, curse words like 'damned Fascists.' Bricks were thrown through the window panes before the speaking started and during the speaking. About 28 windows were broken.* The street was black with people on both sides for at least a block either way of the building. *Bottles were thrown, 'stink' bombs and brickbats were hurled against the building. Missiles of all kinds were flying through the air. A group of 40 boys rushed the police stationed on the staircase and knocked some of them down. About 17 of the group were arrested. Throughout the meeting they kept breaking the windows of the meeting hall.* The howling at times drowned out the speaker's voice. *The rear door was being bashed in, the mob trying to crash it in under the speakers' platform. There were a number of attempts to rush the meeting. At one time a brick came through the window, causing the shade to come out, and many people had to jump up. There was a terrific smash, and everybody jumped up. One of the witnesses testified that he heard the crowd hollering, 'Hang Smith, kill Smith,' and making a chanting noise. Still another witness for the defendant testified that you could not stand the stench-bomb odor; that the*

windows were being smashed throughout the time the defendant spoke." (Emphasis supplied.)

The dissenting opinion of the Presiding Judge contains the following (R. 25):

> "Defendant spoke when the building was surrounded *by a belligerent, noisy mob*, at least as large as the audience in the hall, *seeking by mob violence and threats to deny to those in the hall the constitutional right of peaceable assembly and freedom of speech.*" (Emphasis supplied.)

And it will interest this Court to note that it also contains the following (R. 29):

> "There is nothing in the evidence to indicate that the defendant's attitude, bearing or manner of delivery of his speech was bellicose, belligerent, truculent, challenging or intimidating. His training had been that of a pulpit orator. In parts of his speech he impressed upon his hearers the Christian duty to love the people of all races, limiting his condemnation to the criminal element in the races, and in closing he warned the audience to avoid any controversy with the mob outside and advised them not to stop and argue."

The majority opinion in the Illinois Appellate Court for the First District holds that the meeting at which petitioner spoke was a "public" meeting. The vigorous dissent filed by the Presiding Judge holds that it was a "private" meeting. Petitioner submits that it makes no difference, so far as the issues to be determined by this Court are concerned, whether the meeting was in fact *public* or *private*. The Supreme Court of Illinois sustained the contention of the Appellate Court majority. It is, however, important for this Court to weigh the facts and examine the Record, to see if a "breach of the peace" actually took place inside of the hall while petitioner was speaking. As to that, the fol-

lowing from the dissenting opinion of the Presiding Judge in the Illinois Appellate Court is the most enlightening (R. 27):

> "It" (petitioner's speech) "did not cause or tend to cause a breach of the peace. The demonstrations of the audience, with the possible exception of the man who may have called defendant" (petitioner herein) "a liar, were in hearty approval of what defendant said. One witness for defendant says that the epithet 'God damned liar' was uttered when defendant was speaking. Two witnesses for defendant say that it was applied when Smith was speaking. Karel, for plaintiff, heard it but does not state who was speaking at the time. Latimer said that a man was ejected from the hall when Smith or defendant was speaking—he did not recall which. Had the episode occurred at a public meeting, *the man calling the speaker a liar, and not the speaker, would have been guilty of breach of peace.* No one in the hall was threatened, molested or attacked." (Emphasis supplied.)

In the same connection, the following from the same dissenting opinion is also of interest (R. 23):

> "If we accept the majority opinion holding that the meeting was public, it becomes necessary to determine when epithets, abusive and insulting language constitute a breach of the peace. It is universally held that such language does not constitute a breach of the peace unless it tends to incite immediate violence. *People v. Most*, 171 N. Y. 423, 427; *St. Louis v. Slupsky*, 254 Mo. 309, 318; *State v. Steger*, 94 W. Va. 576, 579. In *Ware v. Loveridge*, 75 Mich. 488, 492, the Court said: 'There are, in some of the definitions, references to language tending to provoke a breach of the peace, and relator's claim is based on this. But the authorities have very plainly held that this covers nothing that is not meant and adapted to bring about violence directly. It is laid down, very positively, that insulting and abusive language does not come within the rule, but it must be

threats of immediate violence, or challenges to fight, or incitements to immediate personal violence or mischief.' In Annotated Cases 1917 C (note p. 889) the author says: 'But it seems that at common law language which was not threatening but merely abusive, vulgar or defamatory, did not constitute a breach of the peace, unless it was of a nature designed to bring about an altercation.' In *Cantwell v. Connecticut*, 310 U. S. 296, 309, cited in the majority opinion, the court, in harmony with the foregoing rule, said: 'One may, however, be guilty of the offense (common law breach of the peace) if he commit acts or make statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended. Decisions to this effect are many, but examination discloses that, in practically all, *the provocative language which was held to amount to a breach of the peace consisted of profane, indecent, or abusive remarks directed to the person of the hearer.*' (Italics ours.)"

It can at least be said, and the Record will bear out the statement, that the meeting was intended to be a *private* one. It can also be said that there was nothing in petitioner's speech that even tended to cause any breach of the peace inside of the hall, much less caused any such breach. The speech was merely an expression of petitioner's views and opinions, perhaps colored somewhat in spots by the unusual conditions that prevailed both outside and inside of the hall while he spoke, as hereinabove related. It was not a *good speech*, either from the standpoint of structure or contents. But he had a right to make it; it came within the purview of his right of "free speech." Therefore, his conviction of "disorderly conduct" in the Municipal Court of Chicago *for making the speech* was wrongful and illegal, as are also the affirmances of that conviction by the Illinois Appellate Court for the First District and the Supreme Court of Illinois. These wrongful, illegal judgments should be reviewed by this Court and in the interests of justice and

for the protection of those inalienable rights of "free speech" and "free assembly" that this Court has so repeatedly upheld in no uncertain terms, they should be reversed forthwith.

Point I

Petitioner is entitled to a reversal of the judgments of the lower Courts, because said judgments are repugnant to prior decisions of this Court relating to "free speech" and "free assembly".

Petitioner's speech was protected by the First Amendment to the Constitution of the United States and by Paragraph 4 of Article II of the Constitution of the State of Illinois. To charge that *by making a speech* he transgressed the so-called "disorderly conduct ordinance" of the City of Chicago is a violation of both the Federal and State guarantees of "freedom of speech" and also of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Petitioner's wrongful conviction in this cause is repugnant to the prior decisions of this Court affecting "free speech" and "free assembly." It must be set aside, if these constitutional guarantees mean anything today and if these prior decisions are to be effective so far as petitioner and this cause are concerned.

It is recognized that the right of free speech is not absolute. Petitioner, for example, has no quarrel with the following from the opinion of this Court in *Stromberg v. California*, 283 U. S. 359, 368:

> "It has been determined that the conception of liberty under the due process clause of the Fourteenth Amendment embraces the right of free speech. *Gitlow* v. *New York*, 268 U. S. 652, 666; *Whitney* v. *California*, 274 U. S. 357, 362, 371, 373; *Fiske* v. *Kansas*, 274 U. S. 380, 382. The right is not an absolute one, and the State in

the exercise of its police power may punish the abuse of this freedom. There is no question but that the State may thus provide for the punishment of those who indulge in utterances which incite to violence and crime and threaten the overthrow of organized government by unlawful means. There is no constitutional immunity for such conduct abhorrent to our institutions."

Nor has he any quarrel with the well-known exception propounded by the late Mr. Justice Holmes that protection afforded by the Constitution would not permit a person to go into a crowded theatre and yell "Fire!"

But he respectfully submits that there is nothing in his speech (R. 68 to 79) that would cause it, or any part of it, to fall within these exceptions.

Nor does his speech, or any part of it, fall within the exception envisioned by this Court in *Chaplinsky v. New Hampshire*, 315 U. S. 568. In that case, Chaplinsky was held to have violated a certain New Hampshire statute when he called a *specific person* a "damned racketeer" and a "damned Fascist". The statute in question was held to be "a statute narrowly drawn and limited to define and punish specific conduct lying within the domain of state power, the use in a public place of words likely to cause a breach of the peace", and the words used by Chaplinsky were held to be "epithets likely to provoke the average person to retaliation, and thereby cause a breach of the peace." In the case at bar, petitioner addressed no remarks whatsoever to any specific person, and, certainly, he used no epithets whatsoever, as the Record will show.

Petitioner's conviction in this cause is repugnant to the decision of this Court in *Thornhill v. Alabama*, 310 U. S. 88. The opinion in that case, by Mr. Justice Murphy, contains the following (Page 95):

"*First.* The freedom of speech and of the press, which are secured by the First Amendment against

abridgement by the United States, are among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgement by a State.

"The safeguarding of these rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government. Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evil averted by the courageous exercise of the right of free discussion. Abridgement of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to effective exercise of the power of correcting error through the processes of popular government. Compare *United States v. Carolene Products Co.*, 304 U. S. 144, 152-153n. Mere legislative preference for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. It is imperative when the effective exercise of these rights is claimed to be abridged, the courts should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations. *Schneider v. State*, 308 U. S. 147, 161, 162."

And at page 97:

"It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. See *Near v. Minnesota*, 283 U. S. 697, 713. One who might have had a license for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for the failure to procure it.

Lovell v. Griffin, 303 U. S. 444; *Hague* v. *C.I.O.*, 307 U. S. 496. A like threat is inherent in a penal statute, like that in question here, which does not aim specifically at evils within the allowable area of state control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. *The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded within its purview.*" (Emphasis supplied.)

That is exactly the situation we have in the case at bar. The prosecuting officials of the City of Chicago seek to deprive petitioner of his freedom of speech by a perverted, illegal use of a "disorderly conduct ordinance". If they are permitted to succeed, further abuses are not hard to envision. It may act to end the "two-party", or "multi-party", system under which this Country has prospered and become great. It is easy to picture Democrats, for instance, seeking, and obtaining, the arrest and conviction of their Republican opponents because of offensive sentiments expressed at some rival political rally, an abuse of the ordinance and of the rights of free speech and free assembly no more flagrant than that in the case at bar. If the legal precedent set in this case thus far is permitted to stand as part of the law of the land, picture the use of it that might be made by the "Dixiecrats" against their "Progressive" opponents—something far more effective and dangerous than the mere throwing of eggs and tomatoes, to which Mr. Henry A. Wallace has recently been subjected.

On page 101 of the *Thornhill* case the Court says:

> "*Fourth.* We think that Section 3448" (the statute involved) "is invalid on its face."

"The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment."

Concluding, on page 104, the Court says:

"Every expression of opinion on matters that are important has the potentiality of inducing action in the interests of one rather than another group in society. But the group in power at any moment may not impose penal sanctions on peaceful and truthful discussion of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interests. Abridgement of the liberty of such discussion can be justified only where the clear danger of substantive evil arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion."

The case of *Cantwell v. Connecticut*, 310 U. S. 296, from which the Presiding Judge of the Illinois Appellate Court quoted briefly, as noted above, is exactly in point with the case at bar. The facts concerning said case are briefly set forth in the petition for a writ of certiorari herein (page 5 hereof); in the interest of brevity, they are incorporated in this brief by reference. The opinion, by Mr. Justice Roberts, contains the following, at page 303:

"*First.* We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment." (Citing: "*Schneider* v. *State*, 308 U. S. 147, 160".) "The First Amendment declares that Congress shall make no law respecting an establishment of religion or pro-

hibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the state as incompetent as Congress to enact such laws."

The same applies with equal force to laws abridging free speech, free press, and free assembly—the other rights protected by the First Amendment. The *Cantwell case*, of course, involves free speech also, for ideas were transmitted as clearly by the playing of the phonograph record as if they had been spoken by Cantwell.

The opinion contains the following at page 308:

"The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect." (Petitioner's speech, as the Record verifies, contains no "incitement to riot" or exhortation to attack anyone. On the other hand, as already noted above, he did "exhort" his hearers to remain peaceful and not engage in any quarrel or argument even with the lawless rioters outside the hall.) "When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious. Equally obvious is it that a State may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions." (This is exactly the situation, so far as respondent is concerned, in the case at bar.) "Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its applica-

tion." (Again the situation, so far as the case at bar is concerned.)

"

"Cantwell's conduct, in the view of the court below, considered apart from the effect of his communication upon his hearers, did not amount to a breach of the peace. One may, however, be guilty of the offense if he commit acts or make statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended. Decisions to this effect are many, but examination discloses that, *in practically all, the provocative language which was held to amount to a breach of the peace consisted of profane, indecent, or abusive remarks directed to the person of the hearer.*"

It is respectfully submitted that there is absolutely nothing of that nature in the speech of petitioner that is claimed by respondent to have "created a diversion tending to a breach of the peace", and, furthermore, that there was nothing "personal" in anything petitioner said, his expressions of political opinion and belief being addressed generally to an audience numbering hundreds of people.

In *Murdock* v. *Pennsylvania (City of Jeannette)*, 319 U. S. 105, other members of "Jehovah's Witnesses" were accused of having violated a City Ordinance by not having first secured a license before going about from door to door, distributing and soliciting people to purchase certain literature. In that case, also, those accused carried a phonograph on which they played records expounding their views on religion. The opinion in that case contains the following (page 108):

"The First Amendment, which the Fourteenth makes applicable to the states, declares that 'Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press . . .' It could

hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional, yet the license tax imposed by this ordinance is, in substance, just that."

And at page 113:

"The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down. *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*, *supra* (308 U. S. 147); *Cantwell* v. *Connecticut*, 310 U. S. 296, 306; *Largent* v. *Texas*, 318 U. S. 418; *Jamison* v. *Texas*, *supra* (318 U. S. 413)."

So, also, is the attempt by respondent in the case at bar to make expression of political opinion and belief the offense of "disorderly conduct" a bold sally into the field of censorship, and it, too, should be struck down with equal emphasis and certainty. At page 115, the opinion contains the following:

"The fact that the ordinance is 'nondiscriminatory' is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality of treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position . . .

"Considerable emphasis is placed on the kind of literature which petitioners were distributing—its provocative; abusive, and ill-mannered character and the assault which it makes on our established churches and the cherished faiths of many of us. See *Douglas* v. *Jeannette*, concurring opinion, post, p. 166. But those considerations are no justification for the license tax which the ordinance imposes."

Respondent, in the trial court, attacked petitioner's speech viciously and sought to impute to it abusive and objectionable matter that it does not contain. This may have been effective with the jury in bringing about petitioner's wrongful conviction. But it cannot alter the wording or nature of the speech, which is contained in the record (R. 68 to 79) substantially as it was delivered. And even if it had been as abusive and objectionable as respondent sought to make it appear, under the decision in the *Murdock case*, just referred to, that would not justify depriving petitioner of his right of free speech.

No stronger words upholding the constitutional rights protected by the First Amendment are to be found in any decision than those used by Mr. Justice Douglas at the close of his opinion in the *Murdock case*, as follows:

> "*Plainly a community may not suppress, or the state Tax, the dissemination of views because they are unpopular, annoying or distasteful.*" (Emphasis supplied.) "If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation of the philosophy of the Bill of Rights."

In *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 639, this Court held the following:

> "The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. *They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect.*" (Emphasis supplied.)

Point 2

The decisions of the lower Courts should be reversed because, if allowed to stand, the conviction of petitioner would constitute a "previous restraint" upon the right of all citizens of the City of Chicago to the "free speech" and "free assembly" constitutionally guaranteed to them.

"Previous restraints" upon the rights protected by the First Amendment have been passed upon by this Court repeatedly and *ruled out* in no uncertain terms.

The case of *Near v. Minnesota*, 283 U. S. 697, is such an important case, involving the freedoms guaranteed by the First and Fourteenth Amendments to the United States Constitution, that it will be discussed and quoted from at greater length than might seem necessary. Though the freedom involved is "freedom of the press," the case is equally applicable to the case at bar, in which "freedom of speech" is primarily involved. It should be clear that "freedom of assembly" and the right to petition the government for a redress of grievances are likewise threatened in the case at bar.

The newspaper sought to be restrained and enjoined in the *Near* case, "The Saturday Press", contained "matter attacking certain Minneapolis newspapers, certain Minnesota politicians and 'the Jewish Race'," contrary to the provisions of a certain statute. The articles "charged in substance that a Jewish gangster was in control of gambling, bootlegging and racketeering in Minneapolis, and that law enforcing officers and agencies were not energetically performing their duties." An attempt was made to assassinate one Guilford, one of the owners of "The Saturday Press." On page 707 Mr. Chief Justice Hughes said:

> "It is no longer open to doubt that the liberty of the press, *and of speech*, is within the liberty safeguarded

lly the due process clause of the Fourteenth Amendment from invasion by state action. It was found impossible to conclude that this essential liberty of the citizen was left unprotected by the general guaranty of fundamental rights of person and property. *Gitlow v. New York*, 268 U. S. 652, 666; *Whitney v. California*, 274 U. S. 357, 362, 373; *Fiske v. Kansas*, 274 U. S. 380, 382; *Stromberg v. California*, ante, p. 359."

According to the State Court, as reported in the opinion on page 709, the statute was "aimed at the distribution of scandalous matter as 'detrimental to public morals and to the general welfare', tending 'to disturb the peace of the community' and 'to provoke assaults and the commission of crime.'"

On page 717 of that opinion this Court quotes Madison, as follows:

> "'Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press. . . .
>
> "'Had "Sedition Acts", forbidding every publication that might bring the constituted agents into contempt or disrepute, or that might excite the hatred of the people against the authors of unjust or pernicious measures, been uniformly enforced against the press, might not the United States have been languishing at this day under the infirmities of a sickly Confederation? Might, they not, possibly, be miserable colonies, groaning under a foreign yoke?'"

And then this Court proceeds:

> "The fact that for approximately one hundred and fifty years there has been almost an entire absence of attempts to impose previous restraints upon publications relating to the malfeasance of public officers is significant of the deep-seated conviction that such restraints would violate constitutional right. Public officers, whose character and conduct remain open to

debate and free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress and punishment, and not in proceedings to restrain the publication of newspapers and periodicals. The general principle that the constitutional guaranty of the liberty of the press gives immunity from previous restraint has been approved in many decisions under the provisions of state constitutions." (Quoting numerous decisions.)

"Previous restraint" on freedom of speech likewise violates a constitutional right. If the City Ordinance of the City of Chicago, involved in the case at bar, were to be upheld and sought to be enforced, it would operate as a "previous restraint" on all speakers in the City of Chicago who might desire to exercise their right of free speech and in so doing criticize crime and corruption on the part of public officials or express views unpopular to well-organized minorities seeking to suppress criticism and impose their arbitrary will on the people of this country. Surely, if the conviction and fine imposed upon petitioner in the lower court is upheld, it will act as a "previous restraint" upon further speaking on his part in the City of Chicago, and thus, in utter disregard of both the State and Federal Constitutions, deprive him of his freedom of speech.

This Court then goes on to say, at Page 721:

"Equally unavailing is the insistence that the statute is designed to prevent the circulation of scandal which tends to disturb the public peace and to provoke assaults and the commission of crime. Charges of reprehensible conduct, and in particular of official malfeasance, unquestionably create a public scandal, but the theory of the constitutional guaranty is that even a more serious public evil would be caused by authority to prevent publication: 'To prohibit the intent to excite those unfavorable sentiments against those who

administer the Government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them is equivalent to a prohibition of discussions having that tendency and effect; which, again, is equivalent to a protection of those who administer the Government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it by free animadversions on their characters and conduct.'" (From: Report on Virginia Resolutions, Madison's Works, Vol. IV, page 549.) "There is nothing new in the fact that charges of reprehensible conduct may create resentment and the disposition to resort to violent means of redress, but this well-understood tendency did not alter the determination to protect the press against censorship and restraint upon publication. As was said in *New Yorker Staats-Zeitung* v. *Nolan*, 89 N. J. Eq. 387, 388; 105 Atl. 72: 'If the township may prevent the circulation of a newspaper for no reason other than that some of its inhabitants may violently disagree with it, and resent its circulation by resorting to physical violence, there is no limit to what may be prohibited.' The danger of violent reactions becomes greater with effective organization of defiant groups resenting exposure, and if this consideration warranted legislative interference with the initial freedom of publication, the constitutional protection would be reduced to a mere form of words."

Judgment was reversed, in a "5 to 4" decision, and it is interesting to note that though the articles complained of attacked Jews far more so than anything respondent sought to "read into" petitioner's speech, as may be seen by reference to said articles, still the late Mr. Justice Brandeis, perhaps the most distinguished American of Jewish faith, held with the majority in reversing the lower Court and in upholding the right of freedom of speech and of the press.

In *Thomas* v. *Collins*, 323 U. S. 516, a Texas statute required labor organizers to register with and procure an

organizer's card from a designated State official before soliciting membership in labor unions. While a State court order restraining Thomas from violating the statute was in effect, he made a speech before an assemblage of workers. At the end of his speech, he urged his hearers, generally, to join a union, and also asked an individual by name to become a member. He was sentenced to imprisonment and fined for contempt of court.

In the opinion written by Mr. Justice Rutledge he says (518):

> "For reasons to be stated we think the statute as it was applied in this case imposed previous restraint upon appellant's right of free speech and free assembly and the judgment must be reversed."

So, in the case at bar, it is not necessarily the city ordinance in question that is unconstitutional but the application sought to be made of it, to deny to petitioner his rights of free speech and free assembly. There was of course no "previous restraint" so far as petitioner's speech of February 7, 1946, was concerned, but his wrongful conviction, if upheld by this Court, will most certainly operate as a "previous restraint" upon future rights of free speech and free assembly, not only those of petitioner but of many others.

Mr. Justice Rutledge concluded the opinion with this eloquent paragraph (page 543):

> "The restraint is not small when it is considered what was restrained. The right is a national right, federally guaranteed. There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise throughout its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be

no more plain than when they are imposed on the most basic right of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty. Judgment reversed."

POINT 3

With all due respect to the learned Jurists who have held otherwise, there was no "breach of the peace" inside of the hall wherein petitioner spoke on the evening of February 7, 1946. This statement is fully supported by the Presiding Judge of the Illinois Appellate Court for the First District in his very able and learned dissent, which evidences the highest degree of discernment (R. 19 to 30). The speech of petitioner, therefore, must be carefully examined to see if it, or any part of it, created a "clear and present danger" that a "breach of the peace" might result because of what was said. Such a "clear and present danger," or degree of imminence, is absolutely essential, under prior decisions of this Court, if petitioner's conviction is to stand.

The "Introductory Statement" that appears at the beginning of this argument contains the pertinent quotations from the dissenting opinion mentioned above. For the sake of brevity, it is included at this point only by reference. The Court is respectfully urged to give the facts contained therein careful consideration.

The opinion in the case of *Cantwell v. Connecticut, supra,* at page 311, contains the following concerning the "clear and present danger" doctrine:

> "Although the contents of the record not unnaturally aroused animosity, we think that, in the absence of a statute narrowly drawn to define specific conduct as constituting *a clear and present danger* to a substantial interest of the State, the petitioner's communication *considered in the light of the constitutional guarantees*, raised no such *clear and present menace* to public peace and order as to render him liable to conviction of

the common law offense in question". (Emphasis supplied).

The *Cantwell case* presents the best answer to respondent in the case at bar. If what Cantwell did was not of such a nature as to create a "clear and present danger" that the peace would be breached (and this Court has held that it was not), it is childish to contend that anything contained in petitioner's speech was of such a nature. Cantwell's affront was to two specific persons who were of the Roman Catholic faith; this, obviously, made them most susceptible to insult by the playing of the phonograph record in question. Petitioner, on the other hand, simply made a general speech to an audience numbering about 800 persons. No part of his speech was directed to any specific person in the audience.

Mr. Justice Rutledge in his learned opinion in the case of *Thomas* v. *Collins, supra*, included the following (page 529):

> "The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. Cf. *Schneider* v. *State*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Prince* v. *Massachusetts*, 321 U. S. 158. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions.
>
> "For these reasons any attempt to restrict those liberties must be justified by *clear public interest*, threatened not doubtfully or remotely, but by *clear and present danger*. The rational connection between the remedy to be provided and the evil to be curbed,

which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, *must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation.* It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly." (Emphasis supplied.)

It is certain that petitioner's speech *endangered no paramount public interest* and *created no clear and present danger* that would justify any limitation upon his freedom of speech or his wrongful conviction, no matter how repulsive and objectionable portions of what he said might be to some persons or groups of persons. What he said, or what it may have been presumed in advance that he might say by his political opponents, could not possibly justify or excuse the lawlessness outside the hall that preceded his speech by a matter of hours and continued during all of the time that he spoke and for a long time thereafter. It was petitioner's unquestioned right to express himself peaceably on matters of current public interest before an audience gathered primarily to hear him. That right must be upheld by this Honorable Court.

In the case of *Bridges* v. *California*, 314 U. S. 252, which is so widely known that it seems unnecessary to set forth any extensive facts pertaining to it, this Court, opinion by Mr. Justice Black, discussed the extent of the substantive evil that must be imminent before any curtailment of free speech or free press is permissible, in the following words (page 262):

"Moreover, the likelihood, however great, that a substantive evil will result cannot alone justify a restric

tion upon freedom of speech or the press. The evil itself must be 'substantial', Brandeis, J., concurring in *Whitney v. California*, *supra*, 274 U. S. 374, 71 L. Ed. 1105, 47 S. Ct. 641); it must be 'serious' (*id.* 378). And even the expression of 'legislative preferences or beliefs' cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant the curtailment of liberty of expression. *Schneider v. Irvington*, 308 U. S. 147, 161, 84 L. Ed. 155, 164, 60 S. Ct. 146.

"What finally emerges from the 'clear and present danger' cases is a working principle that *the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished.* Those cases do not purport to mark the furthermost constitutional boundaries of protected expression, nor do we here. They do no more than recognize a minimum compulsion of the Bill of Rights. For the First Amendment does not speak equivocally. *It prohibits any law 'abridging the freedom of speech, or of the press'.* It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow." (Emphasis supplied.)

The *Bridges case*, of course, involved a contempt proceeding for comments made concerning certain litigation, by Bridges, in a telegram, and by a newspaper in its columns. Primarily, therefore, it concerns "freedom of the press", but, as will be noted, the opinion specifically covers "freedom of speech", as well.

IV

Conclusion

Petitioner feels that the decisions of this Court, as hereinabove set forth, entitle him to have his wrongful conviction for "disorderly conduct" reviewed and set aside. He

respectfully submits that there is nothing in his speech that is involved in this cause that in any way justifies any curtailment of his freedom of speech, no matter how distasteful some parts of it may be to some persons or groups of persons. He glories in the fact that the learned Jurists who grace the Bench of this Court, without exception, have been so liberal in their rulings affecting the rights of free speech as to without question satisfy the philosopher, were he alive today, who said in substance: "I disagree heartily with what he says. But I shall fight to the death, if necessary, to defend his right to say it."

In closing, petitioner urges this Court to resolve any apparent conflict appearing in the Record in his favor, giving him the benefit of any doubt, as it were. He respectfully submits that in so doing the Court would but be exercising its wide discretion once more when considering this perennial "free speech" question, the extent of which discretion may be clearly gathered from the following, which is quoted from the learned opinion of Mr. Justice Frankfurter in *Drivers Union* v. *Meadowmoor Co.*, 312 U. S. 287, 293:

> "Still it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the state courts where a claim of constitutionality is effectively made. And so the right of free speech cannot be denied by drawing from a trivial rough incident or a moment of animal exuberance the conclusion that otherwise peaceful picketing has the taint of force."

Petitioner respectfully prays that this Court may review the judgments of the lower Courts in this cause, to the end that his wrongful conviction of "disorderly conduct"

for making a speech may ultimately be reversed and set aside.

Respectfully submitted,

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APPENDIX

Constitutional Provisions Involved

The First Amendment to the Constitution of the United States provides that:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides that:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 4 of Article II (known as the "Bill of Rights") of the 1870 Constitution of the State of Illinois provides that:

> "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty."

Statutory Provisions Involved

Sub-section 1 of Section 1 of Chapter 193 of the Revised Code of 1939 of the City of Chicago provides that:

> "All persons who shall make, aid, countenance or assist in making any improper noise, riot, disturbance, breach of the peace, or diversion tending to a breach of the peace, within the limits of the City . . . , shall

be deemed guilty of *disorderly conduct*, and upon conviction thereof, shall be severally fined not less than one dollar nor more than two hundred, hundred dollars for each offense." (Emphasis added.)

Provisions of United States Code Affording Jurisdiction

Section 1257 of New Title 28, entitled "Judiciary and Judicial Procedure", of the United States Code provides that:

"Final judgments or decrees rendered by the highest Court of a State in which a decision could be had may be reviewed by the Supreme Court as follows:

"(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or statutes of, or Commission held or authority exercised under, the United States."

Section 2106 of said New Title 28 provides that:

"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."